



S.A.No.891 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.891 of 2022

and

C.M.P.No.18514 of 2022

Elumalai

...Appellant

Janaki Ammal (Deceased)

Vs

Egavali (Deceased)

1.Durai Sankar

2.Bharathi Panchatcharam

3.Devamani

... Respondents

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 06.12.2021 passed in A.S.No.21 of 2014 on the file of the learned Subordinate Judge at Ponneri confirming the Judgment and Decree dated 27.02.2014 passed in O.S.No.238 of 1998 on the file of the learned District Munsif,



S.A.No.891 of 2022

Tiruvottiyur.
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For Appellants : Mr.J.R.K.Bhavanantham

JUDGEMENT

The plaintiffs are the appellant before this Court challenging the concurrent judgment and decree passed against them.

2. The facts in brief is herein below narrated with the parties being referred to in the same ranking as before the Trial Court.

3. The plaintiffs had filed O.S.No.238 of 1998 on the file of the District Munsif, Tiruvottiyur for a permanent injunction restraining the defendants their agent and men and servants from interfering with the peaceful possession and enjoyment of the A and B schedule properties of the plaintiffs.



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S.A.No.891 of 2022

4. The A schedule property is described as follows:

"The house ground and premise bearing Plot No.36A comprised in S.No.153/1, at Ramanathapuram, Ernavur Village, Ambattur Taluk bounded on the North by Plot No.365, South by Plot No.36B, East by Plot No.32, and West by the Plot No.37, measuring about 44 ½ feet East to West on the Northern side 60 feet on the Southern side, North to South 35 feet on the Eastern side, 30 ½ feet on the Western side."

5. The B schedule property is described as follows:

"The land comprised in S.No.153/1, at Ramanathapuram, Ernavur Village, Ambattur Taluk, measuring about 27 ½ feet East to West on both sides, 28 ½ feet North to South on both sides, bounded on the



North Manickkam's Property, South by defendant's property, East by A Schedule, West by Dhatha Mani Kannan's Property."

6. The case of the plaintiffs was that the "A" Schedule property which consisted of a house and ground belonged to the 1st respondent's father and husband of the 2nd plaintiff, one Varadhan. The said Varadhan was given a letter by the Government on 18.11.1973, with reference to the A schedule property. On the western side of the said property, an extent of one cent was possessed and enjoyed by late Varadhan and this property was described as B schedule property. It is the case of the plaintiffs that the possession of the B schedule property of Varadhan was recognised by the Government by a notice dated 22.01.1992. On the death of Varadhan on 04.02.1980, the property devolved on the the plaintiffs and they have been in possession and enjoyment of the same. The plaintiffs have obtained necessary electricity service connection and the town survey field register in

4/11



S.A.No.891 of 2022

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respect of the same stands in their name. The plaintiffs would contend that they have dug a well in B schedule property to which a hand pump was attached. It is their case that the defendants who are residing to the south of B schedule property attempted to fence the B schedule property on 25.10.1998 with an intention of annexing it to their property. The defendants are people with political clout and power and therefore, they have come forward with the above suit for bare injunction.

7. The 2nd defendant had filed a written statement *inter-alia* denying the various contentions put forward by the plaintiffs in their pleadings. It is the case of the defendants that the plaintiffs' father owns 5 cents of land and the defendants' father Perumal owns 5 cents of land on the south of A and B schedule properties. Out of 5 cents, enjoyed by the said Perumal, patta was given in the year 1973 only with reference to eastern 3 cents. Likewise, Varadhan was given patta

5/11



S.A.No.891 of 2022

WEB COPY

for the land on the east from out of 5 cents originally allotted to him.

On 20.12.1961, the said Varadhan, borrowed a sum of Rs.120/- from the 1st defendant as a loan agreeing to repay it with interest at the rate of 12% p.a., and mortgaged the 1 cent of land from out of 5 cents enjoyed by him. Thereafter, in the year 1971, Varadhan and his wife, the 2nd plaintiff conveyed one cent on the west of 5 cents for Rs.500/-.

After adjusting the amount of Rs.120/- due towards earlier mortgage loan and received the balance sum of Rs.380/- from the 1st defendant.

It is this 1 cent which is the B schedule property. The 1st defendant to whom the 1 cent had been conveyed had made improvements upon the same by digging well and installing a hand pump and not the plaintiffs as contended by them. The defendants would further contend that they are in possession of the property and are entitled to protection under Section 53(A) of the Transfer of Property Act.

8. The learned District Munsif on considering the evidence had



S.A.No.891 of 2022

WEB COPY

dismissed the suit. Challenging the same, the plaintiffs had filed A.S.No.21 of 2014 on the file of the Sub-Court, Ponneri. By judgment and decree dated 06.12.2021, the learned Sub-Judge was also pleased to dismiss the appeal. The Courts below had observed that the plaintiffs had relied on the letter dated 22.01.1992, Ex.A6 to prove their possession of the B schedule property from their father's time. The Trial Court has considered this exhibit and given a finding that the letter only shows that Varadhan was asked to pay the value of the land and that he had not paid the value despite several reminders. The 1st plaintiff as PW1 in his cross examination had admitted that the A and B schedule properties together at plot No.36A. However, in Ex.A7, the extent of plot No.36A has been shown as 3 cents which has been admitted by the 1st plaintiff, PW1. Therefore, the trial Court has held that the B schedule property is not plot No.36A. However, a perusal of Ex.A7 would show that B schedule property is no way connected with the said property.



S.A.No.891 of 2022

WEB COPY

9. In the given circumstances, since the plaintiffs had not been able to prove their right, title or interest over the B schedule property, the Courts below have rejected their statements and I see no reason to interfere with the well considered judgment and decree of the Courts below.

10. In the result, this Second Appeal is dismissed and Judgement and Decree dated 06.12.2021 passed in A.S.No.21 of 2014 on the file of the learned Subordinate Judge at Ponneri confirming the Judgment and Decree dated 27.02.2014 passed in O.S.No.238 of 1998 on the file of the learned District Munsif, Tiruvottiyur are confirmed. No costs. Consequently, connected civil miscellaneous petition is closed.

02.11.2022



S.A.No.891 of 2022

Index : Yes/No

Speaking order/non-speaking order
ssn

To

1. The Subordinate Judge,
Ponneri.
2. The District Munsif,
Tiruvottiyur.
3. The Section Officer,
V.R.Section,
High Court, Madras.

9/11



WEB COPY



S.A.No.891 of 2022

P.T.ASHA, J.,

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S.A.No.891 of 2022
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C.M.P.No.18514 of 2022



WEB COPY



S.A.No.891 of 2022

02.11.2022